

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID KRAMER, Individually, and as the)
President and Sole Owner of CERTIFIED)
CAR SALES, LLC., a Missouri Limited)
Liability Company,)
Plaintiff,)

v.)

Case No. 08 CV 2530

SHERIFF'S DEPUTY STEVEN STELTER;))
Individually and as a Deputy of the)
DuPage County Sheriff's Office; JOHN P.)
CREEDON, Individually and as Director)
Of the Tri-County Auto Theft Unit;)
MICHAEL J. COLANDO, deceased,)
Individually and as a member of PUGI)
KIA, LLC and as the President and sole)
Owner of D & M AUTO SALES, INC.;)
DOMINIC L. PUGLIANI, Individually,)
and as a member of PUGI KIA, LLC;)
LARRY M. HALL, Individually and as a)
Manager of PUGI KIA, LLC; ANTHONY)
J. COLANDO, Jr., Individually and as a)
Manager of PUGI KIA, LLC; ANTHONY)
J. COLANDO, Sr., not individually but as)
named executor in his capacity as executor)
of the estate of MICHAEL J. COLANDO,)
deceased; DOMINIC MANCINI,)
Individually and as an attorney; PUGI KIA,)
LLC; D & M AUTO SALES, INC.; KIA)
MOTORS AMERICA, INC.;)
VW CREDIT, INC.,)
Defendants.)

Judge Castillo
Magistrate Judge Keys

JOINT STATUS REPORT

I. Plaintiff's Statement of the Case

The complaint, filed on May 2, 2008, asserts causes of action under the Racketeer Influenced and Corrupt Practice Act, 18 U.S.C. § 1964 ("RICO") alleging a pattern of racketeering acts under the mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, Deprivation Of Civil Rights, 42 U.S.C. § 1983. Plaintiff claims additional injuries under the laws of the State of Illinois arising out of a series of individual frauds, forgeries, misrepresentations, falsified accounting statements and

outright conversions of property occurring in conjunction with an over-arching scheme to sell the falsely inflated assets of a Kia car dealership and the dealership to the Plaintiff. Plaintiff claims Defendants were operating a RICO enterprise which stole Plaintiff's automobiles, used the police to obtain the original titles, subsequently forged Plaintiff's signature on the titles and sold the cars to unwitting purchasers. These fraudulent transactions were conducted tangential to Plaintiff's actions to purchase Pugi Kia and its assets.

The Court held an initial status hearing on May 27, 2008. All defendants, except Dominic Pugliani, have now been served. Three defendants have not yet appeared or plead. Dominic Pugliani is one of the defendants who has not yet appeared. Counsel for Dominic Pugliani appeared in Court at the initial status date. In defense to Plaintiff's motion for service by U.S. Marshall, Mr. Kelly agreed to waive service. However, recent conversations between Plaintiff's counsel and Mr. Kelly reveal there is some misunderstanding regarding this waiver of service. Plaintiff has received letters from counsel pointing out their objections and concerns and is in the process of acting on those letters. Plaintiff is considering amending the complaint to meet all objections raised by the pending motions and letters received from counsel for the defendants.

II. Legal Issues

- A. Whether the prior lawsuit, Certified Car Sales, LLC v. John E. Zaruba, et al. filed in the U.S. District Court, Northern District of Illinois under case number, 06 C 6192 bars the instant case as against some or all of the Defendants, under the doctrine of *res judicata*.
- B. Whether Plaintiff can maintain a private cause of action for mail fraud and wire fraud.
- C. Whether Plaintiff has stated a valid RICO cause of action.
- D. Whether Plaintiff can sue Michael J. Colando, a deceased person.
- E. Whether Plaintiff has alleged sufficient facts against D & M Auto Sales, Inc., Kia Motors America, Inc. and VW Credit, Inc., so as to state a valid cause of action.
- F. Whether the probate exception bars Plaintiff's action against Anthony J. Colando, Sr., as executor of the estate of Michael J. Colando.
- G. Whether Plaintiff's complaint should be dismissed pursuant to Federal Rule of Civil Procedure 8(a)(2) and 8(e)(1).

III. Factual Issues

None of the Defendants have answered Plaintiff's complaint and thus it is too early to determine what are the factual issues.

IV. Outstanding Discovery Issues

Discovery issues have not yet arisen in this case.

V. Pending Motions

The following Defendants have filed the following motions:

- A. Pugi Kia, LLC, Larry M. Hall and Dominic Mancini have filed a motion to dismiss pursuant to Rule 12(b)(6) based on *res judicata* and other grounds.
- B. Kia Motors America, Inc. has filed a motion to dismiss pursuant to Rule 12(b)(6) based on multiple grounds.
- C. Steven Stelter has filed a motion to dismiss pursuant to Rule 12(b)(6) based on *res judicata*.
- E. Anthony J. Colando, Sr. and D & M Auto Sales, Inc. have filed a motion to dismiss pursuant to Rule 12(b)(6) based on multiple grounds.
- F. VW Credit, Inc. has filed a motion to strike and dismiss complaint, and a motion for leave to file a brief in support in support of its motion in excess of 15 pages.

VI. Status of Settlement Discussions

Kia Motors America, Inc. has had and is in ongoing settlement discussions with Plaintiff. There have been no settlement discussions involving the remaining parties.

Date: July 17, 2008

Respectfully submitted,

By: All Attorneys of Record

Prepared By: s/Paul E. Kelly

One of the attorneys for Defendants
Larry M. Hall, Dominic Mancini and
Pugi Kia, LLC.

Paul E. Kelly, ARDC No. 1437356
David L. King, ARDC No. 3128899
M. Kellett McConville, ARDC No. 6290167
KELLY & KING, P.C.
20 North Clark Street, Suite 2900
Chicago, Illinois 60602
312-553-5290
(Fax) 312-553-5291